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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|----------------------|------------------|
| 10/771,679 | 02/03/2004 | Judith Reichenbach | 3896-040076 (P-5974) | 4034 |
| 32182 | 7590 | 07/10/2008 | | |
| David W. Highet, VP & Chief IP Counsel Becton, Dickinson and Company (The Webb Firm) 1 Becton Drive, MC 110 Franklin Lakes, NJ 07414-1880 | | | EXAMINER | |
| OMCBA, ESSAMA | | | | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3726 | |
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| | | | 07/10/2008 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/771,679

Applicant(s)

REICHENBACH ET AL.

Examiner

Essama Omgba

Art Unit

3726

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 and 37-49 is/are pending in the application.
- 4a) Of the above claim(s) 1-25 and 37-48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-29, 31, 32, 34, 35 and 49 is/are rejected.
- 7) ☒ Claim(s) 33 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 24, 2008 has been entered.
2. The indicated allowability of claims 34 and 35 is withdrawn in view of the newly discovered reference(s) to McNealy et al. (US Patent 2,591,578). Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 26-29, 31, 32, 34 and 49 are rejected under 35 U.S.C. 102(b) as being anticipated by McNealy et al. (US Patent 2,591,578).

With regards to claims 26 and 49, McNealy et al. discloses a method of assembling a container comprising an inner tube 21a contained within an outer tube 11, wherein the outer tube includes a closed bottom 12, an open top and a side wall 13

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extending therebetween, the side wall defining an inner surface and an outer surface, the inner surface having a recess 18 below the open top thereof, the inner tube including a closed bottom 22, an open top and a side wall 23 having an inner surface and an outer surface extending therebetween, the side wall of the inner tube being shorter than the side wall of the outer tube and including an outwardly flared portion 33 adjacent the open top of the inner tube, wherein the inner tube is inserted within the open top of the outer tube to a position in which the outwardly flared portion of the inner tube extends below a top edge of the recess of the inner surface of the outer tube, and wherein contact of the outwardly flared portion within the recess sealingly supports the inner tube within the outer tube, see column 3, lines 53-59 and figure 2.

For claim 27, Applicant should note that it is inherent that any air trapped between the inner and outer tube of McNealy et al. will pass through the recess and vent to atmospheric pressure.

For claim 28, the flared portion of inner tube 21a contacts the top edge of the recess as seen in figure 2.

For claim 29, the recess of the outer tube extends circumferentially around the inner surface of the outer tube.

For claim 31, see figure 2.

For claim 32, see column 2, lines 53-59. Since there is snug seating of flange 33 in recess 18, it is inherent that flange 33 is deformed when inner tube 21a is inserted in outer tube 11.

For claim 34, it is inherent that the inner tube of McNealy will be biased toward the open end of the outer tube.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over McNealy et al.

McNealy et al. discloses a method of assembling a container as shown above. Although McNealy does not disclose the closed bottom of the inner tube being in contact with the inner surface of the closed bottom of the outer tube when the flared portion extends below the top edge of the recess of the inner surface of the outer tube, however it would have been an obvious matter of design choice to have the closed bottom of the inner tube be in contact with the inner surface of the closed bottom of the outer tube when the flared portion extends below the top edge of the recess of the inner surface of the outer tube since such a modification would have involved a mere change in size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Allowable Subject Matter

7. Claim 33 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

8. Applicant's arguments with respect to claims 29-29, 31, 32, 34, 35 and 49 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Essama Omgba whose telephone number is (571) 272-4532. The examiner can normally be reached on M-F 9-6:30, 1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bryant can be reached on (571) 272-4526. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Essama Omgba/
Primary Examiner, Art Unit 3726

